



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

November 16, 2023

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**Re: *United States v. Banque Pictet & Cie SA*, 23 Cr. ____ ()
Deferred Prosecution Agreement**

Dear Counsel:

The United States Attorney's Office for the Southern District of New York (the "Office") and the Tax Division of the United States Department of Justice (the "Tax Division") (together with the Office, the "Department") and the defendant Banque Pictet & Cie SA ("Pictet" or the "defendant" and, together with all of Pictet's subsidiaries, branches, affiliates, representative offices, and predecessors in interest, the "Pictet Group"), under authority granted by its Board in the form of a Board Resolution (a copy of which is attached hereto as Exhibit A), hereby enter into this Deferred Prosecution Agreement (the "Agreement").

This Agreement shall take effect upon its execution by all parties.

THE CRIMINAL INFORMATION

1. Pictet waives indictment and consents to the filing of a one-count Information (the "Information") in the United States District Court for the Southern District of New York (the "Court"), charging Pictet with conspiring with others, including U.S. taxpayers, in violation of Title 18, United States Code, Section 371, (1) to defraud the United States and an agency thereof, to wit, the United States Internal Revenue Service (the "IRS"); (2) to file false federal income tax returns in violation of Title 26, United States Code, Section 7206(1); and (3) to evade federal income taxes in violation of Title 26, United States Code, Section 7201, for the period from 2008 to 2014. A copy of the Information is attached hereto as Exhibit B.

ACCEPTANCE OF RESPONSIBILITY

2. Pictet admits and stipulates that the facts set forth in the Statement of Facts, attached hereto as Exhibit C and incorporated herein, are true and accurate. In sum, Pictet admits that it is responsible under U.S. law for the federal criminal violations charged in the Information and set forth in the Statement of Facts as a result of the acts of its partners, officers, directors, employees, or agents.

RESTITUTION, FORFEITURE AND PENALTY OBLIGATIONS

3. As a result of the conduct described in the Information and the Statement of Facts, Pictet agrees to make payments in total of \$122,959,391 to the United States. Specifically, Pictet agrees to (1) make a payment of restitution in the amount of \$31,844,192 (the "Restitution Amount"); (2) forfeit \$52,164,201 (the "Forfeiture Amount") to the United States; and (3) pay a penalty of \$38,950,998 (the "Penalty Amount") to the Department, as set forth below.

Restitution

4. In regard to the Restitution Amount, Pictet admits, and the Department agrees, that the Restitution Amount represents the approximate gross pecuniary loss to the IRS as a result of the conduct described in the Statement of Facts. The Restitution Amount shall not be further reduced by payments made to the IRS by U.S. taxpayers through the Offshore Voluntary Disclosure Initiative and similar programs (collectively, "OVDI") before or after the date of this Agreement that have not already been credited against the Restitution Amount. Pictet agrees to pay the Restitution Amount to the IRS by wire transfer within seven (7) days of the date of the Court's approval of deferral under the Speedy Trial Act in connection with this Agreement. If Pictet fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment, unless the Department, in its sole discretion, chooses to reinstate prosecution pursuant to Paragraphs 21 and 22, below.

Forfeiture

5. The Forfeiture Amount of \$52,164,201 represents a substitute *res* for the approximate gross fees paid to Pictet by U.S. taxpayers with undeclared accounts at Pictet from 2008 through 2014 that are subject to civil forfeiture to the United States pursuant to 18 U.S.C. § 981(a)(1)(C).

6. The Forfeiture Amount shall be sent by wire transfer to a seized asset deposit account maintained by the United States Department of the Treasury within seven (7) days of the Court's approval of deferral under the Speedy Trial Act in connection with this Agreement. If Pictet fails to timely make the payment required under this paragraph, interest (at the rate specified in 28 U.S.C. § 1961) shall accrue on the unpaid balance through the date of payment, unless the Department, in its sole discretion, chooses to reinstate prosecution pursuant to Paragraphs 21 and 22, below.

7. Upon payment of the Forfeiture Amount, Pictet shall release any and all claims it may have to such funds and execute such documents as necessary to accomplish the forfeiture of the funds.

8. Pictet agrees this Agreement, the Information, and the Statement of Facts may be attached and incorporated into a civil forfeiture complaint (the "Civil Forfeiture Complaint"), a copy of which is attached hereto as Exhibit D, that will be filed against the Forfeiture Amount. By this Agreement, Pictet expressly waives service of that Civil Forfeiture Complaint and agrees that a Judgment of Forfeiture may be entered against the Forfeiture Amount. Pictet also agrees that the facts contained in the Information and Statement of Facts are sufficient to establish that the Forfeiture Amount is subject to civil forfeiture to the United States.

Penalty

9. The Department and Pictet agree that, consistent with the factors set forth in U.S.S.G. § 8C2.8 and 18 U.S.C. §§ 3553(a) and 3572(a), and in light of the Forfeiture Amount and the Restitution Amount, the Penalty Amount of \$38,950,998 is an appropriate penalty in this case. This amount reflects a 45% reduction for cooperation. Pictet agrees to pay the Penalty Amount as directed by the Department within seven (7) days of the Court's approval of deferral under the Speedy Trial Act in connection with this Agreement. The Department and Pictet agree that the Penalty Amount is appropriate given the facts and circumstances of this case, including the nature and seriousness of the Pictet Group's conduct as set forth in the Statement of Facts, and also, in mitigation of a higher penalty, among other things, the extensive investigation conducted by Pictet, the provision of a substantial number of documents to the Department, and the facilitation of witness interviews by Pictet. The Department and Pictet further agree that the Penalty Amount is final and shall not be refunded, that nothing in this Agreement shall be deemed an agreement by the Department that the Penalty Amount is the maximum penalty that may be imposed in any future prosecution, and that the Department is not precluded from arguing in any future prosecution that the Court should impose a higher penalty. Under those circumstances, the Department agrees that it will recommend to the Court that Pictet's payment of the Penalty Amount, pursuant to the Agreement, should be credited toward any fine ordered by the Court as part of any future criminal judgment relating to the conduct set forth in the Statement of Facts.

10. Pictet agrees that it will not file a claim or a petition for remission, restoration, or any other assertion of ownership or request for return relating to the Forfeiture Amount or the payment of the Penalty Amount described above, or any other action or motion seeking to collaterally attack the seizure, restraint, forfeiture, or conveyance of the Forfeiture Amount or the Penalty Amount, nor shall it assist any others in filing any such claims, petitions, actions, or motions.

Non-Deductibility

11. Pictet agrees that the Restitution Amount, the Forfeiture Amount, and the Penalty Amount shall be treated as non-tax-deductible amounts paid to the United States Government for all tax purposes under United States law. Pictet agrees that it will not claim, assert, or apply for, either directly or indirectly, a tax deduction, tax credit, or any other offset with regard to any United

States federal, state, or local tax, for any portion of the \$122,959,391 that Pictet has agreed to pay to the United States pursuant to this Agreement.

TERM OF THE AGREEMENT

12. Pictet agrees that its obligations pursuant to this Agreement, which shall commence upon the signing of this Agreement, will continue for three years from the date of the Court's acceptance of this Agreement, unless otherwise extended pursuant to Paragraph 13 below (the "Deferral Period"), subject to the continuing cooperation obligations set forth in Paragraph 18 below. Pictet's obligation to cooperate is not intended to apply in the event that a prosecution against Pictet by the Department is pursued and not deferred.

13. Pictet agrees that, in the event that the Department determines during the Deferral Period described in Paragraph 12 above (or any extensions thereof) that Pictet has violated any provision of this Agreement, an extension of the period of the Deferral Period may be imposed in the sole discretion of the Department, up to an additional one year, but in no event shall the total term of the deferral-of-prosecution period of this Agreement exceed four years.

DEFERRAL OF PROSECUTION

14. Pictet has made a commitment to: (a) accept and acknowledge responsibility for its conduct, as described in the Statement of Facts and the Information attached hereto; (b) cooperate fully, subject to applicable laws and regulations, with the Department, the IRS, and any other law enforcement agency so designated by the Department; (c) make the payments specified in this Agreement; (d) comply with the federal criminal laws of the United States (as provided herein in Paragraph 16(g)); and (e) otherwise comply, subject to applicable laws and regulations, with all of the terms of this Agreement. In consideration of the foregoing, the Department shall recommend to the Court that prosecution of Pictet on the Information be deferred for three years. Pictet shall expressly waive indictment and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of New York for the period during which this Agreement is in effect.

15. The Department agrees that if Pictet is in compliance with all of its obligations under this Agreement, the Department will, at the expiration of the Deferral Period (including any extensions thereof), seek dismissal with prejudice of the Information filed against Pictet pursuant to this Agreement. Except in the event of a violation by Pictet of any term of this Agreement or as otherwise provided in Paragraph 21, the Department will bring no additional charges or other civil action against Pictet relating to its conduct as described in the Information and the Statement of Facts attached hereto. This Agreement does not provide any protection against prosecution for any crimes except as set forth above and does not apply to any individual or entity other than Pictet and its affiliated entities within the Pictet Group that provide private banking services. Pictet and the Department understand that the Court must approve deferral under the Speedy Trial Act, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to defer prosecution for any reason: (a) both the Department and Pictet are released from any obligation imposed upon them

by this Agreement; (b) this Agreement shall be null and void, except for the tolling provision set forth in Paragraph 21, below; and (c) if they have already been transferred to the United States, the Restitution Amount, Forfeiture Amount and Penalty Amount shall be returned to Pictet.

CONTINUING COOPERATION

16. During the Deferral Period, Pictet shall cooperate fully, subject to applicable laws and regulations, with the Department, the IRS, and any other federal law enforcement agency designated by the Department regarding all matters related to the Department's investigation into U.S.-related accounts banking at Pictet (the "Department's Investigation") about which Pictet has information or knowledge, including:

(a) truthfully and completely disclose all information with respect to the activities of the Pictet Group, its partners, officers, employees, and others concerning all such matters about which the Department inquires related to the Department's Investigation, which information can be used for any purpose, except as limited by this Agreement or by applicable laws and regulations;

(b) specifically provide, upon request, all items, assistance, information and documents required to be produced by Swiss banks participating in the Program for Non-Prosecution Agreements or Non-Target Letters for Swiss Banks (the "Swiss Bank Program") as set forth specifically in Parts II.D.1.a-d and 2 of the Swiss Bank Program;

(c) provide, as soon as practicable, transaction information based on Part II.D.2.b.vi of the Swiss Bank Program, to include accounts closed in the period from January 1, 2008 through December 31, 2022, in the format requested by the Department;

(d) make reasonable efforts to implement the closure of recalcitrant accounts and related procedures, to the extent that it has not already done so, as set forth in Part II.G of the Swiss Bank Program and as otherwise consistent with Swiss law;

(e) agrees not to open any U.S. Related Accounts (as defined in Part I.B.9 of the Swiss Bank Program, but without regard to the dollar limit or the reference to the Applicable Period) except on conditions that ensure that the account will be declared to the United States and will be subject to disclosure by Pictet to the extent required by FATCA;

(f) truthfully and completely disclose, and continue to disclose during the Deferral Period, consistent with applicable law and regulations, all information described in Part II.D.1 of the Swiss Bank Program with respect to U.S. Related Accounts held by Pictet from 2008 through 2014 (as those terms are defined in the Swiss Bank Program) that is not protected by a valid claim of privilege or work product with respect to the activities of Pictet and its partners, officers, directors, employees, agents, consultants, and others, which information can be used for any purpose, except as otherwise limited in this Agreement. Subject to applicable laws and regulations, Pictet shall disclose to the Department that it has discovered new information required to be disclosed under this Agreement, including pursuant to this paragraph and Paragraphs 16(b) and (c), no later than thirty days from discovery and provide such information, including

information as described in Part II.D.1 of the Swiss Bank Program and information pursuant to Paragraph 16(b) and (c) of this Agreement, no later than ninety days from discovery. All other terms of this Agreement shall apply with respect to any newly disclosed account;

(g) provide all necessary information and assist the United States with the drafting of treaty requests to seek account records and other information, and will collect and maintain all records that are potentially responsive to such treaty requests to facilitate prompt responses; and

(h) Pictet shall commit no violations of the federal criminal laws of the United States.

17. It is further understood that during the Deferral Period, Pictet will bring, subject to applicable laws and regulations, to the Department's attention: (a) all criminal conduct by, and criminal investigations of, the Pictet Group or its partners, officers, and employees related to any violations of the federal laws of the United States that come to the attention of Pictet's partners, board of directors, executive committee, or senior management, and (b) any investigation conducted by, or any civil, administrative, or regulatory proceeding brought by, any U.S. governmental authority that alleges fraud by the Pictet Group or any other violations of the federal laws of the United States in the operation or management of Pictet's business.

18. Notwithstanding the Deferral Period, Pictet shall also, subject to applicable laws and regulations, continue to cooperate with the Department, the IRS, and any other federal law enforcement agency designated by the Department regarding any and all matters related to the Department's Investigation until the date on which all civil or criminal examinations, investigations, or proceedings, including all appeals, are concluded, whether those examinations, investigations, or proceedings are concluded within the Deferral Period, including:

(a) cooperate fully with the Department, the IRS, and any other federal law enforcement agency designated by the Department regarding all matters related to the Department's Investigation;

(b) retain all records relating to the Department's Investigation, for a period of ten years from the end of the Deferral Period;

(c) provide all necessary information and assist the United States with the drafting of treaty requests seeking account information for accounts owned and/or controlled by U.S. persons, and collect and maintain all records that are potentially responsive to such treaty requests in order to facilitate a prompt response;

(d) assist the Department or any designated federal law enforcement agency in any investigation, prosecution, or civil proceeding arising out of or related to the Department's Investigation by providing logistical and technical support for any meeting, interview, grand jury proceeding, or any trial or other court proceeding;

(e) use its best efforts promptly to secure the attendance and truthful statements or testimony or information of any current or former partner, officer, director, employee, agent, or

consultant of the Pictet Group at any meeting or interview or before any grand jury or at any trial or other court proceeding regarding matters arising out of or related to the Department's Investigation;

(f) provide the Department and the IRS, upon request, testimony of a competent witness as needed to enable the Department and any designated federal law enforcement agency to use the information and evidence obtained pursuant to Pictet's cooperation with the Department before a grand jury or at any trial or other court proceeding regarding matters arising out of or related to the Department's Investigation;

(g) provide the Department, upon request, consistent with applicable law and regulations, all information, documents, records, or other tangible evidence not protected by a valid claim of privilege or work product regarding matters arising out of or related to the Department's Investigation about which the Department or any designated federal law enforcement agency inquires;

(h) upon request, provide fair and accurate translations, at Pictet's expense, of any foreign language documents produced by Pictet to the Government either directly or through any government entity; and

(i) provide to any state law enforcement agency such assistance as may reasonably be requested in order to establish the basis for admission into evidence of documents already in the possession of such state law enforcement agency in connection with any state civil or criminal tax proceedings brought by such state law enforcement agency against an individual arising out of or related to the Department's Investigation.

19. Pictet agrees to use best efforts to close, as soon as practicable, and in no event later than the end of the Deferral Period, any and all U.S. Penalty Accounts (as that term is defined in the Statement of Facts attached hereto as Exhibit C) that have been classified as "dormant" in accordance with applicable laws, regulations and guidelines, and will provide periodic reporting upon request of the Department if unable to close any dormant accounts within that time period. Pictet will only provide banking or securities services in connection with any such dormant account to the extent that such services are required pursuant to applicable laws, regulations and guidelines. If at any point contact with the account holder(s) (or other persons(s) with authority over the account) is re-established, Pictet will promptly proceed to follow the procedures described above in Paragraph 16(d).

20. Nothing in this Agreement shall require Pictet to waive any protections of the attorney-client privilege, attorney work-product doctrine, or any other applicable privilege unless Pictet voluntarily chooses to waive any such privilege. Nothing in this Agreement shall require Pictet to violate the laws or regulations of any jurisdiction in which it operates.

BREACH OF THE AGREEMENT

21. It is understood that should the Department, in its sole discretion, determine during the Deferral Period that Pictet: (a) has knowingly given materially false, incomplete or misleading information either during the Deferral Period or in connection with the Department's Investigation

of the conduct described in the Information or Statement of Facts; (b) committed any crime under the federal laws of the United States subsequent to the execution of this Agreement; or (c) otherwise knowingly violated any provision of this Agreement, Pictet shall, in the Department's sole discretion, thereafter be subject to prosecution for any federal criminal violation, or suit for any civil cause of action, including but not limited to a prosecution or civil action based on the Information, the Statement of Facts, the conduct described therein, or perjury and obstruction of justice. Any such prosecution or civil action may be premised on any information provided by or on behalf of Pictet to the Department or the IRS at any time. In any prosecution or civil action based on the Information, the Statement of Facts, or the conduct described therein, it is understood that: (a) no charge would be time-barred provided that such prosecution is brought within the applicable statute of limitations period (subject to any prior tolling agreements between the Department and Pictet), and excluding the period from the execution of this Agreement until its termination; and (b) Pictet agrees to toll, and exclude from any calculation of time, the running of the statute of limitations for the length of this Agreement starting from the date of the execution of this Agreement and including any extension of the period of deferral of prosecution pursuant to Paragraph 13, above. By this Agreement, Pictet expressly intends to and hereby does waive its rights in the foregoing respects, including any right to make a claim premised on the statute of limitations, as well as any constitutional, statutory, or other claim concerning pre-indictment delay. Such waivers are knowing, voluntary, and in express reliance on the advice of Pictet's counsel.

22. It is further agreed that in the event that the Department, in its sole discretion, determines that Pictet has knowingly violated any provision of this Agreement, including by failure to meet its obligations under this Agreement: (a) all statements made by or on behalf of Pictet to the Department or the IRS, including but not limited to the Statement of Facts, or any testimony given by Pictet or by any agent of Pictet before a grand jury, or elsewhere, whether before or after the date of this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings hereinafter brought by the Department against Pictet; and (b) Pictet shall not assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by or on behalf of Pictet before or after the date of this Agreement, or any leads derived therefrom, should be suppressed or otherwise excluded from evidence. It is the intent of this Agreement to waive any and all rights in the foregoing respects.

23. Pictet, having admitted to the facts in the Statement of Facts, agrees that it shall not, through its attorneys, agents, or employees, make any public statement, in litigation or otherwise, contradicting the Statement of Facts or its representations, agreements and stipulations in this Agreement. Any such contradictory statement by Pictet, through its present or future attorneys, partners, agents, or employees authorized to speak on behalf of Pictet, shall constitute a violation of this Agreement, and Pictet thereafter shall be subject to prosecution as specified in Paragraphs 21 and 22, above, or the Deferral Period shall be extended pursuant to Paragraph 13, above. The decision as to whether any such contradictory statement will be imputed to Pictet for the purpose of determining whether Pictet has violated this Agreement shall be within the sole discretion of the Department. Upon the Department's notifying Pictet of any such contradictory statement, Pictet may avoid a finding of a violation of this Agreement by repudiating such statement, both to the recipient of such statement and to the Department, within 48 hours after having been provided

notice by the Department. Pictet consents to the public release by the Department, in its sole discretion, of any such repudiation. The Department agrees that nothing in this Agreement in any way prevents Pictet from taking good-faith positions, raising defenses, or asserting affirmative claims that are not inconsistent with the Statement of Facts in any civil proceedings, investigations, or litigation involving private parties or government entities, including non-U.S. litigations or non-U.S. investigations. Nothing in this Agreement is meant to affect the obligation of Pictet or its partners, officers, directors, agents or employees to testify truthfully to the best of their personal knowledge and belief in any proceeding.

24. Pictet agrees that it is within the Department's sole discretion to choose, in the event of a violation, the remedies contained in Paragraphs 21 and 22, above, or instead to choose to extend the period of deferral of prosecution pursuant to Paragraph 13, above. Pictet understands and agrees that the exercise of the Department's discretion under this Agreement is unreviewable by any court. Should the Department determine that Pictet has violated this Agreement, the Department shall provide prompt written notice to Pictet of that determination and provide Pictet with a 30-day period from the date of receipt of notice in which to make a presentation to the Department to demonstrate that no violation occurred, or, to the extent applicable, that the violation should not result in the exercise of those remedies or in an extension of the period of deferral of prosecution, including because the violation has been cured by Pictet.

ADDITIONAL PROVISIONS

Limits of the Agreement

25. It is understood that this Agreement is binding on the Office and the Tax Division, but does not bind any other components of the Department of Justice, any other Federal agencies, any state or local law enforcement agencies, any licensing authorities, or any regulatory authorities. However, if requested by Pictet or its attorneys, the Department will bring to the attention of any such agencies, including but not limited to any regulators, as applicable, this Agreement, the cooperation of Pictet, and Pictet's compliance with its obligations under this Agreement.

Public Filing

26. The Department and Pictet agree that, upon the submission of this Agreement (including the Statement of Facts and other attachments) to the Court, this Agreement and its attachments shall be filed publicly in the proceedings in the United States District Court for the Southern District of New York.

27. The parties understand that this Agreement reflects the special facts of this case and is not intended as precedent for other cases.

Compliance Report

28. Pictet agrees to provide an annual report of compliance with the terms of this Agreement, which itemizes the status of each of its obligations under this Agreement and

describing the steps it took to meet those obligations, to the Department no later than the first and second anniversaries of the execution date of this Agreement. Pictet further agrees to provide a final report of compliance no later than 90 days prior to the expiration date of this Agreement. Each such report shall be signed by both an executive of and counsel for Pictet.

Execution in Counterparts

29. This Agreement may be executed in one or more counterparts, each of which shall be considered effective as an original signature.

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Integration Clause

30. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between Pictet and the Department. This Agreement supersedes all prior understandings or promises between the Department and Pictet. No modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Office, the Tax Division, Pictet's attorneys, and a duly authorized representative of Pictet.

Dated: New York, New York
November 14, 2023

Very truly yours,

DAMIAN WILLIAMS
United States Attorney

By: 

Olga I. Zverovich
Daniel G. Nessim
Assistant United States Attorneys
(212) 637-2514 /2486

APPROVED:



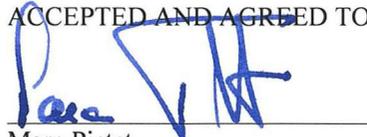
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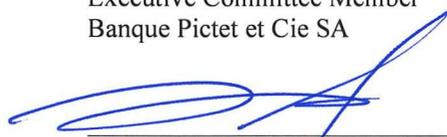
ACCEPTED AND AGREED TO:



Marc Pictet
Group Managing Partner/
Executive Committee Member
Banque Pictet et Cie SA

11/22/2023

Date



Jean-Philippe Nerfin
Group General Counsel/
Executive Committee Member
Banque Pictet & Cie SA

11/22/2023

Date



David A. O'Neil, Esq.
Aymeric Dumoulin, Esq.
Debevoise & Plimpton LLP
Attorneys for Banque Pictet & Cie SA

11/18/2023

Date



Sean Hecker, Esq.
Kaplan Hecker & Fink LLP
Attorney for Banque Pictet & Cie SA

11/18/2023

Date